IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.78 of 1988
Date of decision: .2.2008

The Commissioner of Income-tax,
Jalandhar .....Applicant

Versus

M/s.Gian Chand Bhajan Lal,
Bhathinda .....Respondent

CORAM:- HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE RAKESH KUMAR GARG

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Present: Mr. Sanjeev Bansal, Advocate for the applicant.

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Rakesh Kumar Garg, J .

1. This judgment will dispose of ITR Nos.78 and 79 of 1988 arising out of ITA Nos.269/(ASR)/1986 and ITA No.270/(ASR)/1986 for the assessment year 1982-83 as the common question of law and facts is involved in both the references.

2. Brief facts giving rise to this reference are as under:-

A survey was conducted u/s 133A on the business premises of the assessee firm on 16.7.1982. During the course of survey proceedings, the books of account of the assessee and other documents were seized and as per letter No.1886 dated 19.7.1982 addressed to the Commissioner of Income-tax, Jalandhar through the Inspecting Assistant Commissioner of Income-tax, Bhatinda Range, Bhatinda it had been reported by the then Income-tax Officer, B-Ward, Bhatinda, who conducted the survey, that during the survey operation certain excess stock was found and the assessee surrendered a sum of Rs.55,000/- on account of value of excess stock as compared to that of available

as per books of account as income for the financial year 1981-82 relevant to the asstt. year 1982-83 voluntarily subject to no penalty u/s 271(1)(c).

3. However, later the assessee filed returns disclosing lesser income as per their books and submitted letters stating that the additions of the above amounts had been agreed to by them under pressure, harassment and undue influence and the assessee had never surrendered any amount at the time of survey or at any other time. In support thereof, they swore their affidavits which were filed along with the letters in question.

4. One of the letters written by the assessee to the Income-tax Officer, B-Ward, Bhathinda retracting from their earlier statements made at the time of survey is reproduced hereinafter below:-

> "To
>
> The Income-tax Officer,
> B-Ward, Bhatinda.
>
> Sub:- Regarding M/s Gian Chand Bhajan Lal Commission Agents; Bhucho Mandi Assessment year 1982-83.
>
> Dear Sir,
>
> It is respectfully submitted that on 16.7.1982, a survey u/s 133A was made by your honour accompanied by other ITOs, Inspectors of the Department, members of the staff including certain peons.
>
> It is further submitted that during survey no stock was verified actually. Books were complete and profit and loss was duly prepared and profit as per books was duly divided among the partners of the firm. B/sheet was also duly prepared, profit and loss account and b/sheet was duly signed by your honour.
>
> We have to say under strain that unnecessary pressure, harassment and threats were made to the partners present at the time of survey and two of the partners were forced to give in writing and were also pressed to make entries in the closed books after profit and loss account as under:-

"Rs.55,000/- voluntary surrender during survey as excess stock as income for the financial year 1981-82 relevant to the assessment year 1982-83 subject to no penalty under section 271(1)(c)".

sd/-

(HARBHAJAN SINGH)
INCOME-TAX OFFICER,
A-WARD, BHATINDA.

DATED: 16.7.1982."

The entry is not signed by any of the partners confirming this addition.

We may bring to your kind notice that we deal in food-grains and in kachi arhat of agricultural produce. In this firm, little stocking of goods is being done. During the period under consideration, the assessee only stocked gur and cotton seeds. The goods are being purchased from the local arhties and sale is being made to the traders. There is no possibility of any excess of stock as mentioned in the above narration, which was got under pressure and threats and was asked to surrender Rs. 55,000/-.

Keeping in view the above mentioned facts, it is submitted that as entry regarding surrender of Rs.55,000/- was got written under undue influence of power and not voluntarily, hence, we are not ready to surrender this amount and the return is being filed as per profit and loss a/c duly prepared and signed by your honour at the time of survey. Books have been kept in the ordinary course of business and supported by vouchers, bills and other subsidiary entries. Hence the same be accepted and the entry of surrendering Rs.55,000/- made under pressure be ignored.

Thanking you,

Yours faithfully,

for M/s. Gian Chand, Bhajan Lal
Bhucho
Bhajan Lal
Partner. "

5. The ITO did not accept the pleas of the assessees and made additions of Rs.55,000/- and Rs.30,000/- respectively holding that no

pressure or threat was ever caused by the survey party, and it had been expressly accepted by the assessee that they were making statements without any threat or pressure or harassment. These facts were given in writing to the survey party and therein it had been clarified that these amounts were being surrendered voluntarily without any pressure, threat or undue influence or harassment made by the survey party. It was only later that the assessee had backed out and set up concocted stories.

6. Appeal filed by the assessee before the Commissioner of Income-tax (Appeals) was also dismissed. The assessee/respondent filed further appeals before the Tribunal who came to the conclusion that the word 'surrender' is unknown to the Income-tax law and held that there was no agreement between the ITO and the assessee for the addition of Rs.55,000/- in the case. It was held that the authorities below committed an error in law and facts in making and sustaining such an addition of Rs.55,000/- which was deleted and the appeals were allowed vide order dated 10.11.1986.

7. Feeling aggrieved against the said order of the Tribunal, the Revenue filed applications under Section 256(1) of the Income-tax Act before the Tribunal for referring the question of law as enumerated in the statement of case in RA No.9/(ASR)/1987 arising out of ITR No.269/(ASR)/86 and RA No.10/(ASR)/1987 arising out of ITR No.270/(ASR)/1986 which are said to have arisen out of the Tribunal's order dated 10.11.1986. However, the Tribunal vide its order dated 29.1.1988 passed in the above referred reference applications, referred the following identical question of law in both the appeals at the instance of Revenue:-

> " Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the additions made by the ITO on the basis of the proceedings taken by the survey party at the premises of the assessee and the statements of the respective assessees recorded therein ?."

8. We have heard learned counsel for the applicant-revenue and

perused the record

9. From the record of the case, it is crystal clear that the only dispute between the parties is with regard to the fact whether the alleged surrender of Rs.55,000/- made by the assessee during the course of the survey under Section 133(A) of the Act by the revenue authorities was voluntary or on account of unnecessary pressure, harassment or threat made by the revenue authorities and that the assessee had agreed to the addition of Rs.55,000/- in the relevant assessment year voluntarily.

10. The record shows that an entry was made in the books of accounts of the assessee for Rs.55,000/- voluntary surrendered during the survey as excess stock as income for the financial year 1981-82 relevant to the assessment year 1982-83, subject to no penalty under Section 271(I)(c). This entry is not proved to have been made in the hands of either of the partners or of the I.T.O. It is not made by the I.T.O. as it is merely seen by the I.T.O. Therefore, the entry made as it shows has not been proved. Thus, on this sole ground, the addition made accounting to Rs.55,000/- is bad in law.

11. To our mind, the question referred to by the Tribunal is a question of fact and no question of law is involved referable for the opinion of this Court in the present case. Admittedly, there is no evidence on record to prove the contention of the revenue to the effect that the assessee had surrendered/agreed for making an addition of Rs.55,000/-. Admittedly, in the case in hand the entry in the account books of the assessee, shows that the assessee has surrendered the amount but the said entry has not been signed by the assessee though the same has been signed by the ITO written therein that he has seen it. Thus, the said entry cannot be deemed to have been made by the assessee voluntarily only on the basis of the alleged statement of the partner recorded on 16.7.1982. Even otherwise, the Tribunal while allowing the appeals vide order dated 14.11.1986 has given a finding of fact that there is no agreement between the ITO and the assessee for the addition of Rs.55,000/- in this case.

12. The said finding of fact recorded by the Tribunal is not

challengeable before this Court unless such finding is shown to be perverse on the basis of material evidence on the record of the case. In the present case, there is no such material on the basis of which it can be argued that the findings of fact arrived at by the Tribunal are perverse resulting into miscarriage of justice to the revenue. Hence, both the references are answered in favour of assessee in the affirmative and against the revenue.

13. Both the references stand disposed of accordingly.

(RAKESH KUMAR GARG)
JUDGE

February , 2008 **(SATISH KUMAR MITTAL)**
ps **JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.79 of 1988
Date of decision: .2.2008

The Commissioner of Income-tax,
Jalandhar .....Applicant

Versus

M/s.Kahna Mal Duni Chand
Bhathinda .....Respondent

CORAM:- HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE RAKESH KUMAR GARG

* * *

Present: Mr. Sanjeev Bansal, Advocate for the applicant.

* * *

Rakesh Kumar Garg, J .

Disposed of in view of judgement of even date passed in ITR No.78 of 1988.

(RAKESH KUMAR GARG)
JUDGE

February , 2008
ps

(SATISH KUMAR MITTAL)
JUDGE